

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 53 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BAVAIBHAI KALIDAS PATEL

Versus

KALIDAS D PATEL

Appearance:

MR MC SHAH for Petitioners

MR SR SHAH for Respondent

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/03/98

ORAL JUDGEMENT

This is defendant's Second Appeal.

2. Brief facts giving rise to this Appeal are as under :

The land denoted by letters M.N.O.P. in the map Ex.30 prepared by the Commissioner appointed by the trial Court is said to be chowk land owned and possessed by the

plaintiff - respondent. The houses of the parties have been shown in the said map. The plaintiff is owner of the house denoted by letters A.B.C.D.E.F. whereas the house of the defendant is described by letters I.J.K.L. in the said map. It was alleged that in the month of October 1969 the defendant started collecting their wood over the land belonging to the plaintiff which caused obstruction to plaintiff's user of the disputed land. Initially in the plaint it was not specified which of the two chowk lands situated in front of the house of defendant No.1 belongs to the plaintiff. The suit was ultimately dismissed by the trial Court on 28.4.1971. The plaintiff preferred Appeal No.207 of 1971. In the Appeal the plaintiff moved amendment application which was allowed. The plaint was permitted to be amended and the Suit was remanded to the trial Court for fresh hearing and disposal. After the remand the trial Court decreed the Suit of the plaintiff whereafter an appeal was filed by the defendant which was dismissed. Hence, this Second Appeal.

3. The stand of the defendants in the trial Court was that the disputed chowk land was not portion of the plaintiff's property and that the defendants were in possession of the Suit land since more than 12 years prior to the Suit. Hence, they have become owners by possession. Bar of limitation was also pleaded by the defendants. The defence plea was, however, repelled by the trial Court as well as by the first Appellate Court.

4. As many as seven substantial questions of law were formulated in the Memo of Appeal, but subsequently amendment was sought and after granting amendment only three substantial questions remained for determination in this Second Appeal. These substantial questions are as under:

- (1) Whether the finding of thee Courts below that the suit land is of the ownership of the plaintiffs is not vitiated on account of misreading and misunderstanding the plaintiffs' title deed Ex.28?
- (ii) Whether on a true construction of Ex.28 the suit land was conveyed to the plaintiffs ?
- (iii) Whether in view of the facts and circumstances of the case courts below were right in coming to the conclusion that the plaintiffs were in possession of the Suit land within a period of 12 years from the date of the Suit ?

5. I have heard Shri M.C.Shah, learned Counsel for

the appellant and Shri S.R.Shah, learned Counsel for the respondent and perused the Judgments of the two Courts below and material on record.

6. The substantial questions Nos.1 & 2 are common and in order to avoid repetition these questions are being taken up together.

7. After going through the Judgments of the two Courts below I find that actually the controversy on questions of fact has been determined by concurrent findings of the two Courts below. The learned Counsel for the appellant, however, contended that Sale Deed Ex.28 was not correctly read and interpreted by the two Courts below so also the map prepared by the Commissioner in earlier suit between predecessor in title of the plaintiff - respondent and the defendant - appellant and if these two documents are correctly read the case of the plaintiff stands demolished. He further contended that the plaintiff is not sure as to what was the dimension of the land in dispute at the time of institution of the Suit and this vagueness also goes against the respondent. The third contention has been that in view of the pronouncement of this Court in the case of Parmar Gogji Kana V/s. Parmar Ganesh Moti, reported in A.I.R. 1968 Guj. 287 the case of the plaintiff stand demolished.

8. So far as pronouncement reported in AIR 1968 Guj. 287 is concerned it is a case on different facts and the ratio or the principle of law laid down in this case does not apply to the facts of the case before me. That was a case where easementary right was claimed. It was observed that it should have been clearly pleaded that the land over which the plaintiff was claiming easementary right was in front of house of the owner. In the case before me the short controversy is whether the disputed chowk now specifically denoted by letters M.N.O.P. in the map of the Commissioner belongs to the plaintiff - respondent or not. For determining this question no assistance from the pronouncement in A.I.R. 1968 Guj. 287 can be taken.

9. So far as the contention that the plaintiff was initially vague in his assertion about the dimension of the land in suit has also not much force because in the Appeal amendment application was moved which was allowed and the plaint was permitted to be amended. In the first inning of litigation the vagueness was clarified and the land in dispute was specified and thereafter parties went to trial having specific knowledge about the dimension of the land in dispute.

10. So far as the contention regarding misinterpretation of Sale Deed Ex.28 and map prepared in the previous suit is concerned, of-course misreading of documentary evidence constitutes substantial question of law for determination in second Appeal, but the question is whether it is really a case of misinterpretation or alleged mis-interpretation.

11. The Sale Deed Ex.28 is in favour of the plaintiff's predecessor in interest. In the said Sale Deed the land in dispute in the present suit was specifically sold to the plaintiff's predecessor in title. Consequently if the plaintiff obtained the said land from his predecessor in title it cannot be said that the sale deed was inadmissible or it was improperly read in evidence in this case. The Sale Deed obviously conveyed title in the disputed land in favour of plaintiff's predecessor in title and from his predecessor in title the plaintiff acquired title in the said land. There is thus no mis-interpretation of sale deed Ex.28.

12. So far as the map prepared by the Commissioner on 31.12.1961 in the earlier Suit is concerned it is also not inadmissible documentary evidence. The map was prepared by the commissioner appointed by the Court in a previous litigation where the present appellant and the predecessor in title of the plaintiff were parties. The said map was signed by the litigating parties in the previous litigation and the same was confirmed and was brought on record. Consequently, it will be deemed that the said map is also binding upon the appellant as against the plaintiff who is none else than the successor in interest of one of the parties in the previous litigation. The said map was also rightly read in evidence by the two Courts below.

13. It is not a case where Judgment has been delivered only on the strength of these documents. Other oral evidence was also considered and the defendant's plea of perfection of title by possession exceeding 12 years was repelled. It has been contended that unless the plaintiff establishes his possession over the land in suit for a period exceeding 12 years he cannot succeed in suit or appeal. This contention cannot be accepted for the obvious reason that the plaintiff has not claimed possessory title on the basis of his possession over the land extending 12 years. On the other hand he has claimed title through his predecessor in interest and his predecessor in interest purchased the property through Sale Deed Ex.28. Thus, where the title is claimed on the basis of title deed the question of plaintiff's

possession exceeding twelve years becomes redundant.

14. So far as defendant's title is concerned mere assertion of possession extending 12 years is not enough. The defendant should have pleaded and established that his possession extended 12 years, it was open without interruption and obstruction from the real owner and it was also hostile possession to the title and possession of the real owner. These ingredients were not made out in the trial Court by the defendant - appellant. Consequently the plea of adverse possession is not available to the appellant to demolish title of the plaintiff.

15. In view of foregoing discussion the first two questions are answered in the way that there has been no misreading of sale deed Ex.28 and that this sale deed conveyed title to the plaintiff.

16. The third question regarding plaintiff's possession extending 12 years stand answered in the foregoing portion of this Judgment and conclusion of the two courts below on this point requires no interference.

17. In the result I find no merit in this Appeal which is hereby dismissed with costs.

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